



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1998

Mr. Les Romo
Law Offices of Les Romo
624 South Austin Avenue
Suite 101
Georgetown, Texas 78626

OR98-3073

Dear Mr. Romo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120316.

The Comal County Fresh Water Supply District No. 1 (the "district") received a request for "Mr. Les Romo's invoices for the months of July 1998 and August 1998." You indicate that you will release most of the requested information. You claim, however, that a portion of the documents is excepted from disclosure by sections 552.103 and 552.107 of the Government Code. You have submitted the documents at issue and have marked the portions you seek to withhold.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*,

684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the district is currently involved in two pending cases. One is in state district court. *Comal County Fresh Water Supply District No. 1 v. Tymis*, No. C97-635A (22nd Dist. Ct., Comal County, Tex.). The other is a contested administrative hearing before the Texas Natural Resource Conservation Commission, docket number 98-0086-DIS. You explain that the complainant in this hearing is Mr. Leon Burris. Based upon your representations, you have shown that litigation is pending. Open Records Decision No. 588 at 7 (1991) (contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103). We are also able to determine that most of the marked information is related to these pending suits. *Texas Legal Found.*, 958 S.W.2d at 483 (examining the meaning of "relating to"). You have not, however, demonstrated how some of the marked information relates to the pending litigation. We have marked the information that may be withheld under section 552.103 in brackets.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated or pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We will now consider your argument under section 552.107 for the information not protected by section 552.103. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. See Open Records Decision Nos. 589 (1991), 212 (1978) (even though

the content of a communication might be confidential, the fact of a communication is ordinarily not excepted from disclosure); *see also* See Tex. R. Civ. Evid. 503(a)(5) (a communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services); Open Records Decision Nos. 574 at 5 (1990). We have marked in parentheses those portions of the marked fee bills that appear to be client confidences. We are unable to determine and you have not explained how or why the remaining information is protected under section 552.107(1) as attorney advice and opinion or client confidences. Consequently, those portions of the marked information that are not enclosed within brackets or parentheses must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 120316

Enclosures: Marked documents

cc: Mr. Dallas R. Lawrence
Comal County Fresh Water
Supply District No. 1
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(w/o enclosures)